

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

CARL LEE STEPHENS, II,

Plaintiff,

v.

**CIVIL ACTION NO. 3:13-CV-03
(JUDGE GROH)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull [Doc. 14], filed on October 25, 2013, to which neither party filed objections. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979).

Pursuant to Judge Kaull's report and recommendation, as well as 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 6(d), objections were due fourteen plus three days after entry of the report and recommendation, or by November 13, 2013. The report and recommendation specifically stated that objections were to be filed within fourteen days after being served with a copy. Accordingly, because no objections have

been filed, this Court will review the report and recommendation for clear error.

In this matter, Judge Kaull found that substantial evidence did not support the ALJ's credibility finding. Additionally, among other things, Judge Kaull concluded that (1) the ALJ's determination that Plaintiff did not meet or medically equal any listed impairment was not supported by substantial evidence, (2) the ALJ did not properly take into account Plaintiff's borderline personality disorder in evaluating his credibility, and (3) the ALJ's findings in regards to Plaintiff's statements concerning the intensity, persistence, and limiting effects of his symptoms were not supported by substantial evidence.


Upon review of the above, it is the opinion of this Court that the Report and Recommendation should be, and is, hereby **ORDERED ADOPTED**. For the reasons more fully stated in the Report and Recommendation, this Court **ORDERS** that the Defendant's Motion for Summary Judgment be **DENIED** and the Plaintiff's Motion for Summary Judgment be **GRANTED in part**, by reversing the Commissioner's decision under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3), with a remand of the cause to the Commissioner for further proceedings consistent and in accord with the Report and Recommendation. Accordingly, this Court further **ORDERS** that this matter be **DISMISSED WITH PREJUDICE** and that it be **STRICKEN FROM THE DOCKET OF THIS COURT**.

The Clerk is **DIRECTED** to enter judgment in favor of the Plaintiff.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: November 14, 2013


GINA M. GROH
UNITED STATES DISTRICT JUDGE